

1 STEVEN S. KARIC, SBN 121777
skaric@hkemlaw.com
2 DAVID A. HOUSEHOLDER, SBN 137256
dhouseholder@hkemlaw.com
3 HAMBURG, KARIC, EDWARDS & MARTIN LLP
1900 Avenue of the Stars, Suite 1800
4 Los Angeles, California 90067-4409
Telephone: 310-552-9292
5 Facsimile: 310-552-9291

6 Attorneys for Plaintiff
THE UNIVERSAL CHURCH, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

13 THE UNIVERSAL CHURCH, INC., a New
14 York non-profit corporation,
15 Plaintiff,
16 vs.
17 STANDARD CONSTRUCTION COMPANY
18 OF SAN FRANCISCO, INC., a California
corporation doing business as STANDARD
19 ROOFING COMPANY; THOMAS M.
SESTAK, an individual; FIRST MERCURY
INSURANCE COMPANY, an Illinois entity; and
DOES 1 through 20, inclusive,
Defendants.

CASE NO.

COMPLAINT FOR:

- (1) BREACH OF CONTRACT**
- (2) NEGLIGENCE**
- (3) BREACH OF INSURANCE
CONTRACT**
- (4) BAD FAITH BREACH OF GOOD
FAITH AND FAIR DEALING
COVENANT**

DEMAND FOR JURY TRIAL

THE PARTIES

1. Plaintiff is The Universal Church, Inc., a non-profit corporation organized and existing under the laws of the State of New York, with its principal place of business in Newark, New Jersey. Plaintiff is authorized to conduct and conducts non-profit business of a religious nature in this State of California. As an integral part of its non-profit religious business, plaintiff owns that certain church building located at 3541 20th Street, San Francisco, California (the Property).

1 2. Defendant Standard Construction of San Francisco, Inc. (Standard) is a corporation
2 organized and existing under the laws of the State of California, with its principal place of business
3 in San Francisco, California. Standard does business under the name Standard Roofing Company
4 and, upon information and belief, is duly licensed by the State of California as a general building
5 contractor, with additional licenses or classifications in insulation and acoustical, and roofing.

6 3. Defendant Thomas M. Sestak is an individual who, upon information and belief,
7 resides in the State of California. Sestak is the owner, president and chief executive officer of
8 Standard.

9 4. Defendant First Mercury Insurance Company, Inc. (FMIC) is an entity of unknown
10 status organized and existing under the laws of the State of Illinois, with its principal place of business
11 in Southfield, Michigan, which conducts business in the State of California. FMIC is a nonadmitted
12 foreign or alien insurer which issued a contract of insurance in this State of California to a corporation
13 authorized to do business here.

14 5. The true names and capacities, whether individual, associate, corporate or otherwise
15 of the defendants named herein as Does 1 through 20, inclusive, are unknown to plaintiffs, who
16 therefore sue these defendants, and each of them, by fictitious names. Plaintiffs will amend their
17 Complaint to state the true names of Does 1 through 20 when ascertained. Upon information and
18 belief, each defendant designated as a Doe is responsible for the alleged conduct and is a party against
19 whom relief is appropriate. Upon further information and belief, each defendant is or was an agent,
20 servant, co-conspirator, or employee of each of the other defendants, and in doing the things alleged
21 herein was acting within the course and scope of said agency, conspiracy or employment.

22 6. Upon information and belief, at all material times, there was and is a unity of interest
23 between defendants Standard and its owner Sestak, such that any individuality and separateness
24 between Standard and Sestak never existed or stopped existing, and that Standard was and is the mere
25 instrumentality, conduit, adjunct and *alter-ego* of Sestak, serving no purpose other than the improper
26 avoidance of Sestak's personal liability. Therefore, unless the fiction of the corporate status of
27 Standard is ignored, grave injustice will result and the avoidance of liability will be sanctioned to the
28 great harm and irreparable injury of plaintiff.

JURISDICTION AND VENUE

7. Jurisdiction in this Court is proper under 28 U.S.C. § 1332 in that there is complete diversity of citizenship between plaintiff and defendants and the amount in controversy exceeds \$75,000. Pursuant to 28 U.S.C. § 1332, and as alleged above, plaintiff is a citizen of New York and New Jersey, and defendants are citizens of California, Illinois and Michigan.

8. Venue in this judicial district is proper under 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to the claim occurred in this district, or a substantial part of property that is subject of this action is situated in this district, or one defendant resides in this district and all defendants are residents of this state for purposes of diversity jurisdiction under 28 U.S.C. § 1332.

INTRADISTRICT ASSIGNMENT

9. Assignment of this case to the San Francisco Division is proper under this Court's Civil Local Rule 3-2(c) in that, as alleged herein, a substantial part of the events or omissions giving rise to the claim occurred in that County of San Francisco, or a substantial part of property that is subject of this action is situated in the County of San Francisco.

THE FACTS

10. On or about July 31, 2014, plaintiff entered into a written contract with Standard by which Standard agreed to perform specified roofing repair work on the Property.

11. On or about August 13, 2014, Standard began conducting the roofing repair work at the Property, which continued the next day, on or about August 14, 2014.

12. On or about August 14, 2014, Standard's roofing repair work on the Property started a fire on the roof of the Property. Standard and its workers were unable to extinguish the fire, and also failed to inform plaintiff of the severity of the fire. Upon information and belief, a neighbor who noticed the smoke billowing from the roof of the Property telephoned the San Francisco Fire Department, which responded to the fire.

13. Also on or about August 14, 2014, the Fire Department extinguished the fire on the burning roof of the Property. As a result of the fire and the reasonably foreseeable efforts of the Fire Department to extinguish it, including the use of large quantities of water to do so, the Property was

1 seriously damaged, causing plaintiff to sustain damages in excess of \$1 million. Despite demand,
2 Standard has made no payment to plaintiff to compensate it for such damage, or any portion thereof,
3 or even to remediate the loss and prevent further damage.

4 14. Pursuant to its roofing contract with plaintiff, Standard caused its insurer, defendant
5 FMIC, to name plaintiff as an “additional insured” under Commercial General Liability Policy No.
6 WA-CGL-00000106978-03 (the Policy), effective May 5, 2014, which FMIC issued to Standard and
7 which Standard delivered to plaintiff. The Policy provides insurance coverage to plaintiff of
8 \$1 million per occurrence.

9 15. The damage caused by the fire at the Property constitutes an “occurrence” under the
10 Policy, triggering insurance coverage of up to \$1 million for that damage.

11 16. On or about August 14, 2014, plaintiff submitted a claim arising from the fire at the
12 Property to FMIC as an additional insured under the Policy. FMIC assigned Claim No. 8336-1 to
13 plaintiff’s claim.

14 17. From the initial submittal of its claim on August 14, 2014 and continuing through
15 about September 19, 2014, plaintiff repeatedly demanded that Standard and FMIC pay all costs and
16 expenses to remediate all damage the fire caused to the Property, to prevent additional damage to the
17 Property, and to repair the damage the fire (and the reasonably foreseeable efforts to extinguish it)
18 caused to the Property.

19 18. To date, Standard has failed and refused to pay all costs and expenses to remediate the
20 damage the fire caused to the Property, to prevent additional damage to the Property, and to repair
21 the damage the fire (and reasonably foreseeable efforts to extinguish it) caused to the Property.

22 19. Also to this date, which is more than 30 days after plaintiff’s demand, FMIC has also
23 failed and refused to pay all costs and expenses to remediate the damage the fire caused to the
24 Property, to prevent additional damage to the Property, and to repair the damage the fire (and
25 reasonably foreseeable efforts to extinguish it) caused to the Property. FMIC has also failed and
26 refused to pay plaintiff’s claim under the Policy arising from the fire at the Property, which failure
27 and refusal is more than 30 days after plaintiff’s demand, and which was and is vexatious and without
28 reasonable cause.

1 FIRST CLAIM FOR RELIEF

2 FOR BREACH OF CONTRACT AND THE IMPLIED COVENANT

3 OF GOOD FAITH AND FAIR DEALING

4 (Against Defendants Standard, Sestak and Does 1-10)

5 20. Plaintiff incorporates the allegations of paragraphs 1 through 19 hereof, as if set forth
6 in full.7 21. On or about July 31, 2014, plaintiff and defendant Standard entered into an enforceable
8 written contract by which Standard agreed to perform specified roofing repair work on the Property,
9 which work was to be performed in a skillful, careful, good and workmanlike manner.10 22. The contract also contains an attorney fee clause entitling Standard to recover its
11 reasonable fees and costs from plaintiff in the event of plaintiff's breach of the Agreement and to
12 enforce the contract. By operation of law, the attorney fee clause in the Agreement is reciprocal,
13 entitling plaintiff to recover its reasonable attorney fees and costs from Standard in the event of
14 Standard's breach of the contract and to enforce the contract.15 23. Plaintiff has fully performed all of its obligations under the contract with Standard,
16 except as prevented, excused or discharged by defendants.17 24. Implied in every contract, including the contract with Standard, is a covenant of good
18 faith and fair dealing that no party will deprive the other party of the benefits of the contract, which
19 covenant also imposes a duty to refrain from doing anything which would render performance of the
20 contract impossible, but rather to do everything that the contract presupposes to accomplish its
21 purpose, including performing all construction and roofing related tasks with requisite skill and care,
22 and in a good and workmanlike manner.23 25. Defendants failed and refused to perform the roof repair work at the Property with
24 requisite skill and care, and in a good and workmanlike manner, such that defendants caused the roof
25 of the Property to catch fire, which caused the San Francisco Fire Department to respond and
26 extinguish the fire. Defendants also failed and refused to pay all costs and expenses to remediate the
27 damage the fire caused to the Property, to prevent additional damage to the Property, and to repair
28 the damage the fire (and the reasonably foreseeable efforts to extinguish it) caused to the Property.

1 26. As a result of defendants' above-described conduct in breach of the contract with
2 plaintiff and the covenant of good faith and fair dealing implied therein, plaintiff has been damaged
3 and is entitled to recover all such damages, including at least the \$1 million in property damage to its
4 Property, plus additional consequential and reliance damages in an amount not presently known, and
5 attorney fees and costs, in an amount to be proven at trial.

6 27. Because there is a unity of interest between Standard and Sestak such that Standard is
7 the mere the instrumentality, conduit, adjunct and *alter-ego* of Sestak, grave injustice will result and
8 the avoidance of liability will be sanctioned to the great harm and irreparable injury of plaintiff unless
9 the fiction of the corporate status of Standard is ignored and Sestak is held liable, jointly and severally,
10 with Standard, for the damage caused to plaintiff by the breach of Standard's contract with plaintiff.

SECOND CLAIM FOR RELIEF

FOR NEGLIGENCE

(Against Defendants Standard, Sestak and Does 1-10)

14 28. Plaintiff incorporates the allegations of paragraphs 1 through 19 hereof, as if set forth
15 in full.

16 29. In undertaking to perform repair work on the roof of the Property, defendants had the
17 duty of care to perform such work in the manner of a reasonably prudent person in the circumstances,
18 with requisite skill and care.

19 30. Defendants breached their duty of care by performing their repair work on the roof in
20 such a negligent manner, and without the requisite skill and care, as to cause the roof of the Property
21 to catch fire, which caused the San Francisco Fire Department to respond and extinguish the fire.

22 31. As a result of defendants' above-described negligent conduct and failure to perform
23 the specified repair work in accordance with their duty of care and with the requisite skill and care,
24 which caused the fire at the Property, plaintiff sustained over \$1 million in property and consequential
25 damages.

26 32. Because there is a unity of interest between Standard and Sestak such that Standard is
27 the mere the instrumentality, conduit, adjunct and *alter-ego* of Sestak, grave injustice will result and
28 the avoidance of liability will be sanctioned to the great harm and irreparable injury of plaintiff unless

- 1 the fiction of the corporate status of Standard is ignored and Sestak is held liable, jointly and severally,
- 2 with Standard, for the damage caused to plaintiff by defendants' negligence.

THIRD CLAIM FOR RELIEF
FOR BREACH OF INSURANCE CONTRACT
(Against Defendants FMIC and Does 11-20)

6 33. Plaintiff incorporates the allegations of paragraphs 1 through 19 hereof, as if set forth
7 in full.

8 34. As stated, plaintiff is an “additional insured” under the Policy, providing insurance
9 coverage of \$1 million per occurrence to plaintiff for covered claims under the Policy. As also stated,
10 plaintiff timely submitted its covered claim to FMIC under the Policy arising from the fire at the
11 Property on August 14, 2014, and has fully and timely performed or offered to perform any and all
12 other obligations under the Policy, except as prevented, excused or discharged by defendants.

13 35. To date, however, and despite repeated demands, FMIC has failed and refused to
14 accept coverage for plaintiff's claim as an additional insured under the Policy, and has further failed
15 and refused to pay any of the costs and expenses to remediate the damage the fire caused to the
16 Property, to prevent additional damage to the Property, and to repair the damage the fire (and the
17 reasonably foreseeable efforts to extinguish it) caused to the Property. FMIC has done this even
18 though the fire constitutes an "occurrence" under the Policy, even though the fire was caused by the
19 above-described conduct of FMIC's named insured Standard in negligently performing its roofing
20 repair work at the Property, and even though plaintiff is an additional insured under the Policy,
21 entitled to all benefits and protections under the Policy.

22 36. As a result of defendants' above-described conduct in breach of the Policy, plaintiff
23 has been damaged and is entitled to recover all such damages, including at least the \$1 million in
24 property damage to its Property, plus additional consequential and reliance damages in an amount not
25 presently known, and attorney fees and costs, in an amount to be proven at trial.

26 37. As stated, defendants' failure to pay plaintiff under the Policy is vexatious and without
27 reasonable cause. Further, plaintiff has been compelled to hire attorneys to obtain payment and all
28 benefits as an additional insured under the Policy. Under California law, therefore, including without

1 limitation, California Insurance Code § 1619, plaintiff is entitled to recover from FMIC all the
 2 reasonable attorney fees, expert fees and costs it incurs to obtain those Policy benefits.

3 **FOURTH CLAIM FOR RELIEF**

4 **FOR BAD FAITH BREACH OF THE IMPLIED COVENANT
 5 OF GOOD FAITH AND FAIR DEALING
 6 (Against Defendants FMIC and Does 11-20)**

7 38. Plaintiff incorporates the allegations of paragraphs 1 through 19 and 34 through 37
 8 hereof, as if set forth in full.

9 39. Implied in every insurance contract, including the Policy, is a covenant of good faith
 10 and fair dealing that no party will deprive the other party of the benefits of the contract, which
 11 covenant also imposes a duty to refrain from doing anything which would render performance of the
 12 contract impossible, but rather to do everything that the contract presupposes to accomplish its
 13 purpose.

14 40. Defendants breached the covenant of good faith and fair dealing implied in the Policy
 15 by failing and refusing to make a thorough and prompt investigation of the circumstances surrounding
 16 the fire at the Property and underlying plaintiff's claim, by failing and refusing to accept coverage for
 17 plaintiff's claim, and by unreasonably delaying and withholding payment of benefits due to plaintiff
 18 as an additional insured under the Policy.

19 41. As a result of defendants' above-described conduct in breach of the covenant of good
 20 faith and fair dealing implied in the Policy, plaintiff has been damaged and is entitled to recover all
 21 such damages and benefits under the Policy, including at least the \$1 million in property damage to
 22 its Property, plus additional consequential and reliance damages in an amount not presently known,
 23 and attorney fees and costs, in an amount to be proven at trial.

24 42. As stated, defendants' failure to pay plaintiff under the Policy is vexatious and without
 25 reasonable cause. Further, plaintiff has been compelled to hire attorneys to obtain payment and all
 26 benefits as an additional insured under the Policy. Under California law, therefore, including without
 27 limitation, California Insurance Code § 1619, plaintiff is entitled to recover from FMIC all the
 28 reasonable attorney fees, expert fees and costs it incurs to obtain those Policy benefits.

1 43. Defendants' breach of the covenant of good faith and fair dealing implied in the Policy
2 was done in bad faith, with the intention of depriving plaintiff of its lawful rights and otherwise
3 causing it to be injured. By conducting themselves in this manner, defendants have acted maliciously,
4 oppressively and in bad faith, intending to cause injury to plaintiff, or it has acted despicably with a
5 willful and conscious disregard of plaintiff's rights in favor of its own interests, subjecting plaintiff
6 to unjust hardship. Therefore, in addition to compensatory damages, plaintiff is entitled to recover
7 punitive or exemplary damages from defendants, and each of them, in an amount to be proven at trial.

8 WHEREFORE, plaintiff hereby requests judgment in its favor and against defendants, and
9 each of them, as follows:

- 10 A. For damages in the amount of at least \$1 million;
- 11 B. For punitive or exemplary damages, according to proof;
- 12 C. For prejudgment interest at the statutory rate;
- 13 D. For reasonable attorney fees and expert fees;
- 14 E. For costs of suit; and
- 15 F. For such other and further relief as is appropriate.

16 | DATED: October 14, 2014

STEVEN S. KARIC
DAVID A. HOUSEHOLDER
HAMBURG, KARIC, EDWARDS & MARTIN LLP

By /s/ Steven S. Karic
STEVEN S. KARIC

Attorneys for Plaintiff
THE UNIVERSAL CHURCH

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to the Seventh Amendment to the United States Constitution and Rule 38(b) of the
3 Federal Rule of Civil Procedure, plaintiff The Universal Church, Inc. hereby demands a trial by jury
4 of all issues triable of right by jury.

5 DATED: October 14, 2014

STEVEN S. KARIC
DAVID A. HOUSEHOLDER
HAMBURG, KARIC, EDWARDS & MARTIN LLP

6
7 By /s/ Steven S. Karic
8 STEVEN S. KARIC

9 Attorneys for Plaintiff
10 THE UNIVERSAL CHURCH

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